

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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GUOCHANG MA

Plaintiff,

- against -

VERIFIED ANSWER TO
COMPLAINT
1:19-cv-6348

DH NEWLAND CORP. and DUFAN LI

Defendants.
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Defendants, DH Newland Corp. and Dufan Li, by and through their attorney,
Geng & Associates, P.C., hereby answer the complaint filed by Plaintiff Guochang Ma,
and respond as follows:

INTRODUCTION

1. There are no allegations contained in Paragraph 1 of the Complaint to which a response from the Defendants is required.
2. Defendants deny the allegations contained in Paragraph 2 of the Complaint.
3. Defendants deny the allegations contained in Paragraph 3 of the Complaint.
4. Defendants deny the allegations contained in Paragraph 4 of the Complaint, except to the extent that this paragraph contains legal conclusion for which Defendants refer to the Court at the trial of this action, and otherwise deny the remainder of the allegations.

JURISDICTION

5. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations.

6. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations.

7. Defendants refer all questions of law to the Court at the trial of this action, and otherwise admit the remainder of the allegations.

VENUE

8. Defendants refer all questions of law to the Court at the trial of this action, and otherwise admit the remainder of the allegations.

9. Defendants refer all questions of law to the Court at the trial of this action, and otherwise admit the remainder of the allegations.

PARTIES

10. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations.

11. Defendants admit the allegations contained in Paragraph 11 of the Complaint.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint.

STATEMENT OF FACTS

13. Defendants admit the allegations contained in Paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations in Paragraph 19 of the Complaint.
20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.
21. Defendants admit the allegations contained in Paragraph 21 of the Complaint.
22. Defendants deny the allegations contained in Paragraph 23 of the Complaint.
23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.
24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.
25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.
26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.
27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.
28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.
29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.
30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.
31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

CAUSE OF ACTION

Count 1. Fraudulent Filing of Information Returns

32. Defendants repeat, reallege, and incorporate by reference the foregoing answers as if set forth fully and again herein.
33. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations in Paragraph 33 of the Complaint.
34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

- 35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.
- 36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.
- 37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.
- 38. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations in Paragraph 38 of the Complaint.

Count 2. New York Labor Law Time of Hire Wage Notice Requirement

Violations

- 39. Defendants repeat, reallege, and incorporate by reference the foregoing answers as if set forth fully and again herein.
- 40. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations in Paragraph 40 of the Complaint.
- 41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.
- 42. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations in Paragraph 42 of the Complaint.
- 43. Defendants refer all questions of law to the Court at the trial of this action, and otherwise deny the remainder of the allegations in Paragraph 43 of the Complaint.

DEFENDANTS' AFFIRMATIVE DEFENSES

AS AND FOR FIRST AFFIRMATIVE DEFENSE

44. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

AS AND FOR SECOND AFFIRMATIVE DEFENSE

45. The damages claimed by Plaintiff, which is expressly denied, were in whole or in part the result of Plaintiff's culpable conduct.

AS AND FOR THIRD AFFIRMATIVE DEFENSE

46. If any damages were sustained by the Plaintiff as alleged in the Complaint, which damages are expressly denied, all such damages have been caused and brought about in whole or in material part by the affirmative wrongdoing, negligence, want of care and other culpable conduct of the Plaintiff, and as a consequence thereof the Plaintiff's damages should be reduced by the proportion of Plaintiff's culpable conduct which cause the alleged damages..

AS AND FOR FOURTH AFFIRMATIVE DEFENSE

47. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff failed, refused, and/or neglected to mitigate or avoid the damages complained of in the Complaint, if any.

AS AND FOR FIFTH AFFIRMATIVE DEFENSE

48. Plaintiff's claim under 26 U.S.C. § 7434 should be barred to the extent Plaintiff had unclean hands because Plaintiff is the person who caused the information returns to be filed. Please see a copy of Chat History between Plaintiff and Defendant Dufan Li attached hereto as **Exhibit A**.

AS AND FOR SIXTH AFFIRMATIVE DEFENSE

49. Plaintiff fails to name proper parties because Defendant Dufan Li did not file the information returns.

AS AND FOR SEVENTH AFFIRMATIVE DEFENSE

50. Plaintiff's claim under 26 U.S.C. § 7434 should be barred to the extent of Plaintiff's lack of damages because not only Plaintiff actively asked for the alleged over-report information returns, but Plaintiff also benefits from the information returns at issue. *See Exhibit A.*

AS AND FOR EIGHTH AFFIRMATIVE DEFENSE

51. Plaintiff is unjustly enriched from the claim under 26 U.S.C. § 7434 because Plaintiff demanded repeatedly Defendants to over-report the information returns at issue, and Plaintiff expressed repeatedly the over-reporting is in its interests. *See Exhibit A.*

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

52. Plaintiff's claim under 26 U.S.C. § 7434 is estopped because Defendant DH Newland filed the information returns at issue in response to Plaintiff's demand. *See Exhibit A.*

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

53. Defendants, at all times, acted in good faith to comply with the NYLL, and with reasonable grounds to believe that their actions did not violate the statutes cited in the Complaint, and Defendants assert a lack of willfulness or intent to violate the NYLL as a defense to any claim by Plaintiff's for liquidated damages.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

54. Plaintiff's claim under NYLL is frivolous because in the Notice and Acknowledgement of Pay Rate and Payday Defendant DH Newland Corp gave to Plaintiff, to which Plaintiff signed on July 14, 2018, Plaintiff identified its primary language to be English. As a waiter at DH Newland Corp, Plaintiff also presented that he speaks English fluently. Please see a true copy of the above referenced notice attached hereto as **Exhibit B**.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

55. Plaintiff's Complaint, in whole or in part, is in bad faith, because the Complaint was filed for an improper purpose to harass or revenge Defendants and another employee of the Defendant DH Newland Corp. *See Exhibit A*.

WHEREFORE, having fully answered, Defendants prays that:

- a. Plaintiff's Complaint be dismissed with prejudice and judgment entered in Defendants' favor;
- b. Defendants recover its costs and expenses of litigation, including attorneys' fees from Plaintiff;
- c. Defendants have such other and further relief as may be deemed just and proper.

Dated: August 26, 2019
Queens, NY

Respectfully submitted,

/s/ Sylvia P. Tsai
Sylvia P. Tsai, Esq.
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